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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,040	01/25/2002	Michael L. Myrick	16139/09002-CON	5497

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EXAMINER

SEDIGHIAN, REZA

ART UNIT PAPER NUMBER

2633

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Sm

<b>Office Action Summary</b>	<b>Application No.</b> 10/057,040	<b>Applicant(s)</b> MYRICK, MICHAEL L.	
	<b>Examiner</b> M. R. Sedighian	<b>Art Unit</b> 2633	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 is/are allowed.
- 6) ☒ Claim(s) 4 and 6 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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1. This communication is responsive to applicant's 10/12/04 amendments in the application of Michael L. Myrick for "Optical Computational System" filed 1/25/02. The amendments have been entered. Claims 1-6 are now pending.

2. Claim 6 is objected because of the following informality:

The sentence "... said light signal applied to said measurement sample is simultaneously applied to said measurement sample." in lines 4-5, should change to

--- said light signal simultaneously applied to said measurement sample ---.

Correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Khoe et al. (US Patent No: 4,942,568).

Regarding claim 4, Khoe teaches a light source in an optical spectroscopy system (col. 3, lines 55-60), a method of compensating for a change in light signal (col. 3, lines 36-45), comprising the steps of: providing a light source ( $\lambda_1$ , fig. 1) that outputs a light signal having a wavelength spectrum (col. 3, lines 55-60); identifying a relationship between intensity of the light signal and a difference between the wavelength spectrum and an expected wavelength spectrum of the light source (col. 3, lines 64-66, for example, the difference between the real and

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nominal values of the wavelength in relationship to intensity of current through the laser, and correcting the transmitted wavelength by controlling the intensity of the current through the laser, since the intensity of a light emitted by a laser is essentially proportional to the intensity of current supplied to the laser), detecting (20, fig. 1) intensity of the light signal output by the light source (col. 3, lines 61-63); and based on the relationship and the intensity from the detecting step, modifying the wavelength spectrum in compensation for a change in the wavelength spectrum of the light signal (col. 3, lines 63-68). The recited limitations of claim 4 interpreted broadly, and applicant's attention is directed that during the prosecution of a pending patent application the terms found in the claims should be given the broadest reasonable interpretation, *See in re Pearson*, 181 USPQ 641 (CCPA 1974). As to the recitation "an optical spectroscopy", it has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. *See In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alguard (US Patent No: 5,642,189).

Regarding claim 6, Alguard teaches for a light source in an optical spectroscopy system (col. 8, lines 43-50 and 78, 80, fig. 1), a method of compensating for change in a light signal (col. 9, lines 32-34), comprising the steps of: applying a light signal (54, fig. 1) from the light source (24, fig. 1) to a measurement sample (12, fig. 1), wherein the entire wavelength range of the light signal is simultaneously applied to the measurement sample (col. 8, lines 10-20), defining a change in spectral shape over the wavelength range (col. 9, lines 35-38) and a change in input power to the light source (col. 9, line 40), and relating the change in the spectral shape to a modification in input power and modifying the input power in compensation for the change in spectral shape (col. 9, lines 38-43, col. 12, lines 50-56). Alguard differs from the claimed invention in that Alguard does not specifically define a relationship between a change in spectral shape over the wavelength range, and a change in input power to the light source. However, Alguard discloses a computer 30 that is used to control the input power to a lamp 24 (col. 9, lines 35-42), and accordingly, such computer could use a defined relationship between change in spectral shape and input power to lamp 24, to further provide an exact amount of change in input power that results a desired and exact spectral shape. The recited limitations of claim 6 interpreted broadly, and applicant's attention is directed that during the prosecution of a pending patent application the terms found in the claims should be given the broadest reasonable interpretation, *See in re Pearson*, 181 USPQ 641 (CCPA 1974).

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7. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 1-3 are allowed over prior art of record.

9. Applicant's arguments with respect to claims 4 and 6 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. R. Sedighian whose telephone number is (571) 272-3034.

The examiner can normally be reached on M-F (from 9 AM to 5 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
M. R. SEDIGHIAN  
PRIMARY EXAMINER